

## REMARKS

### I. Status Summary

Claims 8, 20, and 26-29 are pending in the present application and have been examined by the United States Patent and Trademark Office (hereinafter "the Patent Office") in a Final Official Action dated October 8, 2008 (hereinafter the "Final Official Action").

Claims 26 and 29 have been rejected under 35 U.S.C. § 112, first paragraph, upon the contention that the claims fail to comply with the written description requirement.

Claims 26 and 29 have also been rejected under 35 U.S.C. § 112, second paragraph, upon the contention that the claims are indefinite.

Claims 8, 20, and 26-29 have been rejected under 35 U.S.C. § 102(b) upon the contention that the claims are anticipated by U.S. Patent No. 5,683,894 to Edwards et al. (hereinafter referred to as "Edwards").

Claims 8, 20, and 26-29 have been rejected under 35 U.S.C. § 103(a) upon the contention that the claims are unpatentable over U.S. Patent No. 5,169,762 to Gray & Ullrich (hereinafter "Gray & Ullrich") and U.S. Patent No. 5,235,043 to Collins et al. (hereinafter "Collins").

Claims 26 and 29 have been amended. Support for the amendments can be found throughout the specification as filed, including at page 22, line 28, through page 29, line 3. Thus, no new matter has been added by the amendments to claims 26 and 29.

Reconsideration of the application as amended and based on the remarks set forth below is respectfully requested.

### II. Response to the Rejection under 35 U.S.C. § 112, First Paragraph

The Patent Office has rejected claims 26 and 29 under 35 U.S.C. § 112, first paragraph, upon the contention that the claims fail to comply with the written description requirement upon the contention that the phrase "less than about twice that of rh  $\beta$ -NGF on a molar basis" constitutes new matter.

Applicants respectfully disagree with the Patent Office's assertions with respect to the instant rejection. However, without acquiescing to the Patent Office's contentions, applicants have amended claims 26 and 29 to remove the phrase at issue and replace the same with the phrase "wherein the human proNGF has a biological activity in a dorsal root ganglion (DRG) assay that is about half that of human  $\beta$ -NGF in the same assay on a molar basis". Support for the amendment to claims 26 and 29 can be found in the specification as filed, including particularly at page 22, line 28. through page 29, line 3. Thus, no new matter has been added by the amendments to the claims.

Applicants respectfully submit that as a result of the amendments, the instant new matter rejection of claims 26 and 29 under 35 U.S.C. § 112, first paragraph, have been rendered moot. As such, applicants respectfully request that the instant rejection be withdrawn at this time.

III. Response to the Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 26 and 29 have been rejected under 35 U.S.C. § 112, second paragraph, upon the contention that the phrase "less than about twice" renders the claims indefinite.

Applicants respectfully disagree. Nonetheless, and without acquiescing to the Patent Office's assertions, applicants have amended claims 26 and 29 to delete the phrase at issue. As such, applicants respectfully submit that the instant rejection has been rendered moot, and respectfully request that it be withdrawn at this time.

IV. Remarks with Respect to the Rejections under §§ 102 and 103

With respect to the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103 that have been maintained in the Final Official Action, applicants respectfully maintain the arguments that they presented in the response to the previous Official Action. As such, and in view of the Notice of Appeal being filed concurrently herewith, applicants respectfully submit that the present filing is fully responsive to the issues in the outstanding Final Official Action. Applicants also hereby reserve the right to address these rejections in more detail in an Appeal Brief.

CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the present amendment places the claims in better condition for appeal. Applicants respectfully request that the instant amendment be entered so that an appeal of the instant application proceed on the basis of the claims as amended herein.

DEPOSIT ACCOUNT

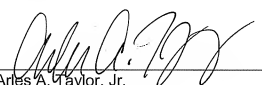
The Commissioner is hereby authorized to charge any underpayment or credit any overpayment of fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR & HUNT, P.A.

Date: March 9, 2009

By: \_\_\_\_\_

  
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